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13
 14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

16 NETWORK APPLIANCE, INC.,

CASE NO. 3:07-CV-06053 EDL (JCS)

17 Plaintiff – Counterclaim
 18 Defendant,

Defendant –
**DECLARATION OF MARK D. FOWLER IN
 SUPPORT OF SUN MICROSYSTEMS,
 INC.’S REPLY IN SUPPORT OF MOTION
 FOR PARTIAL STAY OF THE CASE
 PENDING REEXAMINATION OF UNITED
 STATES PATENT NOS. 5,819,292, 6,857,001
 AND 6,892,211**

19 v.
 20

SUN MICROSYSTEMS, INC.,

21 Defendant -
 Counterclaimant.

Date: May 13, 2008
 Time: 9:00 a.m.
 Courtroom: E, 15th Floor
 Hon. Elizabeth D. Laporte

22 I, Mark D. Fowler, declare as follows:

23 1. I am an attorney at law duly licensed to practice before this Court and am a partner
 24 with the law firm of DLA Piper US LLP, attorneys for Sun Microsystems, Inc. (“Sun”). I have
 25 personal knowledge of the matters set forth herein and, if called as a witness, I could and would
 26 competently testify thereto.

27 2. On December 18, 2007 and December 20, 2007, I participated in a Federal Rule of

1 Civil Procedure 26(f) conference with Network Appliance, Inc.'s ("NetApp") counsel. During
2 this conference, I informed NetApp's counsel that if the United States Patent and Trademark
3 Office granted Sun's requests for reexamination, Sun intended to seek a stay of the litigation with
4 respect to those patents in reexamination.

5 3. Sun further informed NetApp and the Court of its intention of filing a motion to
6 stay the litigation with respect to those patents in reexamination in the Joint Case Management
7 Statement filed on January 22, 2008 (p.19). Attached hereto as **Exhibit A** is a true and correct
8 copy of the parties' Joint Case Management Statement filed on January 22, 2008.

9 4. On January 28, 2008, the Court held a Case Management Conference in the above-
10 titled action. During the Case Management Conference, I again informed both NetApp and the
11 Court of Sun's intention to request a stay of the litigation with respect to those NetApp patents in
12 reexamination.

13 I declare under penalty of perjury under the laws of the United States of America that the
14 foregoing is true and correct. Executed on May 2, 2008 in East Palo Alto, California.



Mark D. Fowler